No. 75-1514

In the Supreme Court of the United States

OCTOBER TERM, 1975

BERNARD M. PESKIN,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

SUPPLEMENTAL PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

THOMAS P. SULLIVAN
CAROL R. THIGPEN
Attorneys for Petitioner
Bernard M. Peskin

Of Counsel:
JENNER & BLOCK
One IBM Plaza
Chicago, Illinois 60611

UNITED STATES LAW PRINTING CO., CHICAGO, ILLINOIS 60618 (312) 525-6581

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Petitioner Bernard M. Peskin, defendant-appellant in the court below, files this Supplement in support of his petition for a writ of certiorari filed in this Court on April 21, 1976.

Petitioner wishes to call to the Court's attention the case of *United States* v. *Prince,* 529 F.2d 1108 (6th Cir. 1976), which was not reported at the time when petitioner filed his petition for a writ of certiorari in this Court. The *Prince* case is relevant to petitioner's argument in Section II of his petition entitled "The Court of Appeals'

Decision on the Travel Act Counts Is in Conflict with Rulings of this Court and of Courts of Appeals." (Petitioner's brief at 14-17.)

In Section II A of his brief, petitioner argues that the interstate checks which form the basis for four Travel Act counts are insufficient to invoke federal jurisdiction because, among other reasons, "they were not known to or foreseen by petitioner." (Petitioner's brief at 16.)

In *United States* v. *Prince,* the defendant Prince was convicted under 18 U.S.C. §§1952 and 2. The Court of Appeals held that there is a requirement of a separate intent related to the use of interstate facilities, which is different from the intent required to commit the underlying state offense, concluding:

> "[S]ince Prince was not shown either to have traveled interstate or used interstate facilities, her strictly intrastate activities could not be held to constitute a violation of the Travel Act in the absence of a showing that she knew or reasonably should have known of Pandelli's interstate activities." (529 F.2d at 1112.)

The *Prince* Court rejected the reasoning of *United States* v. *LeFaivre,* 507 F.2d 1288, 1297 (4th Cir. 1974), *cert. denied,* 420 U.S. 1004, in which the interstate activity was treated as a "jurisdictional peg" not requiring proof of knowledge. See also *United States* v. *Miller,* 379 F.2d 483 (7th Cir. 1967), *cert. denied,* 389 U.S. 930, in which the Court held that Section 1952 does not require an intent to violate federal law by using a facility in interstate commerce.

The interstate checks which formed the basis for the four Travel Act counts in petitioner's case were not sent to petitioner. Petitioner never saw or even knew of these checks. The checks were Kaufman and Broad inter-cor-

porate transfers of funds from the Michigan parent company to its fully-owned Illinois subsidiary. Petitioner sent his bills to the Illinois subsidiary and was paid by intrastate checks from the subsidiary.*

There is a direct conflict between the decisions of the Fourth and Seventh Circuits and the Sixth Circuit on an issue of great importance, which should be resolved by this Court.

Respectfully submitted,

THOMAS P. SULLIVAN
CAROL R. THIGPEN
Attorneys for petitioner
Bernard M. Peskin

Of Counsel:
JENNER & BLOCK
One IBM Plaza
Chicago, Illinois 60611

July 1, 1976

* Three Travel Act counts based on payment to petitioner by the subsidiary by means of these intrastate checks were dismissed by the trial judge on the ground that they did not furnish a sufficient basis for federal jurisdiction under the Travel Act.